

## CHAPTER 51

### DRAINAGE AND LEVEE DISTRICTS — MISCELLANEOUS PROVISIONS

H.F. 529

**AN ACT** relating to drainage and levee districts, by providing for mergers, repairs and improvements, and elections.

*Be It Enacted by the General Assembly of the State of Iowa:*

#### DIVISION I MERGERS

Section 1. Section 468.265, subsection 2, Code 2015, is amended by striking the subsection and inserting in lieu thereof the following:

2. *a.* The auditor of the county where a participating drainage or levee district is situated or the auditor designated by the board shall deliver the notice required in subsection 1 to all landowners in the district in the same manner as provided in sections 468.14 through 468.18, as the auditor deems appropriate.

*b.* If land is to be annexed as a condition of the merger, as provided in this part, the auditor of the county where the land to be annexed is situated or the auditor designated by the board shall deliver the notice to the owners of such land by ordinary mail.

Sec. 2. Section 468.265, subsections 3 and 4, Code 2015, are amended by striking the subsections.

#### DIVISION II THRESHOLD AMOUNTS FOR PERFORMING WORK

Sec. 3. Section 468.3, Code 2015, is amended by adding the following new subsection:  
**NEW SUBSECTION.** 01. As used in this chapter, unless the context otherwise requires, the term “*adjusted competitive bid threshold*” means the same as the adjusted competitive bid threshold for vertical infrastructure applicable to counties as established by the state department of transportation pursuant to section 314.1B.

Sec. 4. Section 468.3, subsection 9, Code 2015, is amended by striking the subsection.

Sec. 5. Section 468.34, Code 2015, is amended by striking the section and inserting in lieu thereof the following:

#### **468.34 Advertisement for bids.**

The board shall publish notice once each week for two consecutive weeks in a newspaper published in the county where the improvement is located, and publish additional advertisement and publication elsewhere as the board may direct. The notice shall state the time and place of letting the work of construction of the improvement, specifying the approximate amount of work to be done in each numbered section of the district, the time fixed for the commencement, and the time of the completion of the work, that bids will be received on the entire work and in sections or divisions of it, and that a bidder will be required to deposit a bid security with the county auditor as provided in section 468.35A. All notices shall set the date that bids will be received and upon which the work will be let. However, when the estimated cost of the improvement is less than the adjusted competitive bid threshold, the board may let the contract for the construction without taking bids and without publishing notice.

#### Sec. 6. **NEW SECTION. 468.35A Bids — letting of work.**

1. The board shall award a contract or contracts for each section of the work to the lowest responsible bidder or bidders therefor, bids to be submitted, received, and acted upon separately as to the main drain and each of the laterals, and each settling basin, if any, exercising their own discretion as to letting such work as to the main drain as a whole, or as

to each lateral as a whole, or by sections as to both main drain and laterals, and reserving the right to reject any and all bids and readvertise the letting of the work.

2. A bid shall be in writing, specifying the portion of the work upon which the bid is made, and filed with the auditor. The bid shall be accompanied with a bid security. The bid security shall be in the form of a deposit of cash, a certified check on and certified by a bank in Iowa, a certified share draft drawn on a credit union in Iowa, or a bid bond with a corporate surety satisfactory to the board as provided in section 73A.20. The bid security must be payable to the auditor or the auditor's order at the auditor's office in a sum equal to five percent of the amount of the bid. However, if the maximum limit on a bid security would cause a denial of funds or services from the federal government which would otherwise be available, or if the maximum limit would otherwise be inconsistent with the requirements of federal law, the maximum limit may be suspended to the extent necessary to prevent denial of federal funds or services or to eliminate the inconsistency with federal requirements. The cash, check, or share draft of an unsuccessful bidder shall be returned, and the bid bond of an unsuccessful bidder shall be canceled. The bid security of a successful bidder shall be maintained as a guarantee that the bidder will enter into contract in accordance with the bids.

Sec. 7. NEW SECTION. **468.36A Performance bond — return of deposit.**

A successful bidder is required to execute a bond with sureties approved by the auditor in favor of the county for the use and benefit of the levee or drainage district and all persons entitled to liens for labor or material in an amount not less than seventy-five percent of the contract price of the work to be done, conditioned for the timely, efficient, and complete performance of the contract, and the payment, as they become due, of all just claims for labor performed and material used in carrying out the contract. When a contract is executed and bond approved by the board, the cash, certified check, or certified share draft deposited with the bid shall be returned to the bidder.

Sec. 8. Section 468.66, Code 2015, is amended to read as follows:

**468.66 Bids required.**

~~In case If the board determines that a change described in section 468.62 increases the cost of the improvement to more than in excess of the adjusted competitive bid threshold as provided in section 26.3, the board and any bidders shall comply with the competitive bid requirements applicable to a governing entity ordering the construction of a public improvement in chapter 26 work shall be let by bids in the same manner as is provided for the original construction of such improvements.~~

Sec. 9. Section 468.126, subsection 1, paragraphs c and d, Code 2015, are amended by striking the paragraphs and inserting in lieu thereof the following:

c. If the estimated cost of the repair does not exceed fifty thousand dollars, the board may order the work done without conducting a hearing on the matter. Otherwise, the board shall set a date for a hearing and provide notice of the hearing to landowners in the district by publication in the same manner as provided in section 468.15. However, if the estimated cost of the repair exceeds the adjusted competitive bid threshold, the board shall provide notice to the landowners pursuant to sections 468.14 through 468.18. The board shall not divide a proposed repair into separate programs in order to avoid the notice and hearing requirements of this paragraph.

d. If a hearing is required under paragraph "c", the board shall order an engineer's report or a report from the soil and water conservation district conservationist regarding the matter to be presented at the hearing. The board may waive the report requirement if a prior report on the repair exists and that report is less than ten years old. At the hearing, the board shall hear objections to the feasibility of making the proposed repair.

Sec. 10. Section 468.126, subsection 1, Code 2015, is amended by adding the following new paragraphs:

NEW PARAGRAPH. e. Following a hearing, if required in paragraph "c", the board shall determine whether the repair is necessary or desirable, and feasible.

NEW PARAGRAPH. f. Any interested party has the right of appeal from such orders in the manner provided in this subchapter, parts 1 through 5.

NEW PARAGRAPH. g. The right of remonstrance does not apply to a repair as provided in this section.

Sec. 11. Section 468.126, subsection 2, Code 2015, is amended to read as follows:

2. In the case of a ~~minor~~ repair, or in the eradication of brush and ~~or~~ weeds along the open ditches, not in excess of ~~twenty thousand dollars~~ the adjusted competitive bid threshold, where the board finds that a saving to the district will result, the board may cause the repairs or eradication to be done by secondary road fund equipment, or weed fund equipment, and labor of the county and then reimburse the secondary road fund or the weed fund from the fund of the drainage district thus benefited.

Sec. 12. Section 468.126, subsection 4, Code 2015, is amended to read as follows:

4. a. For the purpose of this subsection, an “*improvement*” in a drainage or levee district in which any ditch, tile drain, or other facility has previously been constructed is a project intended to expand, enlarge, or otherwise increase the capacity of any existing ditch, drain, or other facility above that for which it was designed.

~~a.~~ b. When the board determines that an improvement is necessary or desirable, and feasible, the board shall appoint an engineer to make surveys as seem appropriate to determine the nature and extent of the ~~needed~~ improvement, and to file a report showing what improvement is recommended and its estimated cost, which report may be amended before final action.

c. If the estimated cost of the improvement does not exceed fifty thousand dollars, the board may order the work done without conducting a hearing on the matter. Otherwise, the board shall set a date for a hearing on whether to construct the proposed improvement and whether there shall be a reclassification of benefits for the cost of the proposed improvement.

(1) (a) The board shall provide notice to landowners in the district by publication in the same manner as provided in section 468.15. However, if the estimated cost of the improvement exceeds the adjusted competitive bid threshold, the board shall provide notice to the landowners pursuant to sections 468.14 through 468.18.

(b) Notwithstanding subparagraph division (a), and in lieu of publishing the notice, the board may mail a copy of the notice to each address where a landowner within the district resides by first class mail if the cost of mailing is less than publication of the notice. The mailing shall be made during the time the notice would otherwise be required to be published.

(2) The board shall not divide proposed improvements into separate programs in order to avoid compliance with this paragraph “*b*” “*c*”.

d. At the hearing, if required in paragraph “*c*”, the board shall hear objections to the feasibility of the proposed improvements and arguments for or against a reclassification presented by or for any taxpayer of the district. Following a the hearing, if required by section 26.12, the board shall order that the improvements improvement it deems necessary or desirable and feasible be made and shall also determine whether there should be a reclassification of benefits for the cost of improvements the improvement. If it is determined that a reclassification of benefits should be made, the board shall proceed as provided in section 468.38. ~~In lieu of publishing the notice of a hearing as provided by section 331.305, the board may mail a copy of the notice to each address where a landowner in the district resides by first class mail if the cost of mailing is less than publication of the notice. The mailing shall be made during the time the notice would otherwise be required to be published.~~

~~b.~~ When ordering the construction of an improvement under this subsection, the board shall comply with the competitive bid requirements applicable to a governing entity ordering the construction of a public improvement in chapter 26. If the improvement is more than fifty thousand dollars but less than the competitive bid threshold in section 26.3, the board shall conduct a hearing on the matter of making the proposed improvement. The board shall provide notice of the hearing as provided in sections 468.14 through 468.18.

~~e.~~ e. If the estimated cost of the improvements improvement exceeds the adjusted competitive bid threshold as provided in section 26.3, or the original cost of the district plus the cost of subsequent improvements in the district, whichever amount is the greater amount, a majority of the landowners, owning in the aggregate more than seventy percent

of the total land in the district, may file a written remonstrance against the proposed ~~improvements~~ improvement, at or before the ~~time fixed date set~~ for hearing on the proposed ~~improvements~~ improvement as provided in paragraph "c", with the county auditor, or auditors in case the district extends into more than one county. If a remonstrance is filed, the board shall discontinue and dismiss all further proceedings on the proposed improvements and charge the costs incurred to date for the proposed improvements to the district. Any interested party may appeal from such orders in the manner provided in this subchapter, parts 1 through 5. However, this section does not affect the procedures of section 468.132 covering the common outlet.

DIVISION III  
JUDGES OF TRUSTEE ELECTIONS

Sec. 13. Section 468.521, Code 2015, is amended to read as follows:

**468.521 Elections — how conducted.**

1. After the first election of trustees, the board of trustees shall act as judges of election; however, a trustee standing for election shall not serve as a judge ~~and shall be replaced as judge by a person not standing for election who is eligible to be elected as a trustee.~~

2. The clerk of the board shall act as one of the clerks and ~~some~~ an owner of land in the district shall be appointed by the board to act as another clerk.

3. ~~The trustees board shall fill all vacancies in the election board~~ any vacancy of an acting election judge by appointing a person who resides in the county where all or part of the drainage or levee district is located and who is eligible to vote in a general election in that county.

4. The result of each election shall be certified to the auditor or the several county auditors if the district is located in more than one county.

Approved April 17, 2015